IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL Nos.109/03 & 115/03

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders.	Court's or Judge's orders.

Mr.Anand Jaiswal for the appellant.
Mr.Dewani for the respondent.

CORAM : J.P. DEVADHAR AND
B.P. DHARMADHIKARI, JJ.
DATED : 4TH APRIL, 2007.

P.C. :

1. The revenue has filed these appeals under Section 260A of the Income Tax Act, 1961 stating therein that the following substantial questions of law do arise out of the orders of the Tribunal dated 28/4/03 in IT(SS)A No.35/Nag/1999 & IT(SS)A No.34/Nag/99 (Block Assessment 1987-88 to 1996-97)

a. Whether, on the facts and in the circumstances of the case, the ITAT was justified in law in confirming the order of the CIT(A) deleting the addition of Rs.12,45,992/- made on account of undisclosed income of the assessee ?

b. Whether, on the facts and in the circumstances of the case, the ITAT was justified in law in confirming the order of the CIT(A) apportioning the undisclosed income between the various persons including the assessee ?

c. Whether, on the facts and in the circumstances of the case, the ITAT was

justified in law in deciding that the disclosure under the VDIS 1997 can be made in a case where no direct search is initiated though such case is interconnected with other search proceedings as far as the undisclosed income due to search is concerned ?

d. Whether the ITAT was correct in holding that the income pertaining to the assessee was disclosed under VDIS in the name of other persons in December 1997 even after the issuance of notice u/s.158BD on 20-06-1997 ?

e. Whether the income found during the search can be declared under VDIS despite the specific provisions of section 64(2)(ii) of the VDIS scheme 1997 ?

2. In this case, search was conducted at the residential and business premises of one Shri K.K. Borele at Yavatmal on 16.1.1997. During the course of search, some incriminating documents relating to Tendu Patta business carried on by Shri K.K. Borele and others including the assessee were found and from the said documents it was revealed that income earned from the said business had not been disclosed by the assessee. Consequently, notice under Section 158BC read with section 158BD was issued by the Assessing Officer to the assessee. In response to the notice, the assessee filed return on 7.1.1998 declaring undisclosed income at NIL. During the course of assessment proceedings, the assessee contended that the income from Tendu Patta business recorded in the documents seized during the

search was not disclosed earlier but the same had been declared by the assessee as well as other related persons under VDIS. According to the Assessing Officer, the assessee was not entitled to avail the benefit of VDIS after the search and accordingly, the Assessing Officer completed the block assessment, assessing undisclosed income of the assessee at Rs.12,45,992/- and Rs. 16,55,413/- respectively from the said business.

3. Being aggrieved by the aforesaid order, both the assessee's filed appeals before the CIT (A) who deleted the addition by relying upon the statement made by the assessee. The CIT(A) was of the opinion that since the amounts were disclosed under VDIS, the additions made by the Assessing Officer were liable to be deleted. On further appeal, the Tribunal has upheld the order of the CIT(A).

4. The only dispute in this case is, whether the undisclosed income from Tendu Patta business declared under VDIS can be added as undisclosed income of the assessee. It is not in dispute that the very same amount sought to be included in the hands of the assessee have been declared under VDIS by different persons including the assessee and the same have been accepted and certificates under the VDIS issued. Validity of the said certificates issued under VDIS have not been challenged by the department.

Therefore, the findings recorded by the Tribunal that the amounts declared under VDIS cannot be taxed in the hands of the assessee cannot be faulted.

5. In this view of the matter, we see no merit in these appeals. Accordingly, both the appeals stand dismissed with no order as to costs.

(Judge) (Judge)

kulkarni